

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

v.

15-CR-19-A

GEORGINA FISHER a/k/a
Georgina Baratta,

Defendant.

**MOTION REQUESTING THE COURT RESCIND AND WITHDRAW ITS
DECISION AND ORDER DATED OCTOBER 6, 2015**

The Court has ruled that a Monsanto hearing is required. The government therefore will conduct such a hearing pursuant to the Court's Order. Notably, when the government previously appeared before this Court on August 20, 2015, the government was prepared to run such a hearing. However, from the outset of that appearance, the on the record discussion involved the applicability of the Second Circuit's decision in United States v. Cosme, 796 F. 3d 226 (2d Cir. 2015). While the hearing never went forward as the Court heard further argument by the parties and the Court directed that the parties thereafter make further submissions to the Court, the fact of the matter was that the government was (and remains) willing and prepared to run a Monsanto hearing.¹ In fact, so that there is no ambiguity or uncertainty, the government consents to the defendant's request for a Monsanto hearing and will present witness testimony at that hearing.

¹ The government intends no criticism of the Court in hearing further argument on the Cosme issue on August 20th. The government's only point is that it was prepared to run a hearing on that date.

Inasmuch as the government fully consents to conduct a Monsanto hearing, and, further, because the defendant's own motion papers recognize that the availability of any of the other relief sought therein is entirely dependent on the outcome of that hearing,² there is not at this time any additional motion before or issue to be decided by this Court. For that reason, the government respectfully requests that the Court rescind and withdraw its Decision and Order of October 6, 2015 (Docket Item #64) in its entirety. The Court's Order, as it now stands, touches upon wide-ranging issues which far exceed the limited relief sought by the defendant, *i.e.*, that a Monsanto hearing be conducted. Once such a hearing is conducted, this Court can decide whether and to what extent additional issues exist and whether defendant may be entitled to any of the additional relief she seeks.

DATED: Buffalo, New York, October 19, 2015.

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² See Docket Item #21-1 at 6-7, wherein the defendant argues as follows: "In the event that the government fails to present at the Monsanto hearing adequate evidence establishing probable cause that the assets are subject to forfeiture, Defendant respectfully requests that the Court direct removal of the *lis pendens* on Ms. Fisher's home, and strike from the indictment the forfeiture allegation with respect to that property."